

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Escrow Agent License of:

No. 08F-BD016-BNK

3 **FINANCIAL TITLE COMPANY AND IVY**
4 **ANDERSON, PRESIDENT**
705 Gold Lake Drive, Suite 210
Folsom, CA 95630

CONSENT ORDER

5
6 Petitioners.

7 On October 9, 2007, the Arizona Department of Financial Institutions ("Department") issued
8 a Notice of Hearing alleging that Petitioners had violated Arizona law. Wishing to resolve this
9 matter in lieu of an administrative hearing, Petitioners do not contest the following Findings of Fact
10 and Conclusions of Law, and consent to the entry of the following Order.

11 **FINDINGS OF FACT**

12 1. Petitioner Financial Title Company ("FTC") is a California corporation, authorized to
13 transact business in Arizona as an escrow agent, license number EA 0907018, within the meaning of
14 A.R.S. §§ 6-801, *et seq.* The nature of FTC's business is that of an escrow agent within the meaning
15 of A.R.S. § 6-801(5).

16 2. Petitioner Ivy Anderson ("Ms. Anderson") is the President of FTC.

17 3. On March 5, 2007, the Department conducted an examination of FTC's business affairs.
18 Based upon that examination, a report was prepared which revealed that FTC and MS. Anderson
19 have:

- 20 a. Failed to adopt and implement adequate procedures to ensure accurate and timely
21 reconciliation of the escrow trust bank account statements with the escrow trial
22 balance report and general ledger exclusively for Arizona escrows, specifically:
- 23 i. Examiners reconciled eight (8) bank accounts that were used to process
 - 24 Arizona escrows in lieu of Arizona reconcilements;
 - 25 ii. Petitioners did not separate Arizona escrows from escrow monies in other
 - 26 states in its escrow software program; and

- 1 iii. The list of Arizona escrows provided by Petitioners during the examination
2 could not be verified as accurate;
- 3 b. Failed to provide adequate follow-up on trust account reconciliation adjusting items
4 in a timely manner, specifically:
- 5 i. Examiners could not determine the number, amounts, or delinquent period of
6 adjusting items for Arizona escrows because they could not be separated from
7 escrows from other states; and
- 8 ii. Examiners reconciled escrow accounts that included Arizona escrow funds
9 and determined that the Petitioners were not adequately researching and
10 clearing bank adjustments in a timely manner;
- 11 c. Failed to adequately follow-up on stale-dated outstanding checks aged greater than
12 six (6) months, specifically:
- 13 i. Petitioners did not adequately follow up on outstanding checks aged greater
14 than six (6) months, specifically:
- 15 1. Two thousand, eighty four (2,084) aged, outstanding checks totaling
16 one million, six hundred fifty eight thousand, five hundred forty two
17 dollars and eighty four cents (\$1,658,542.84) were contained in the
18 eight (8) bank accounts reviewed by Examiners;
- 19 ii. Examiners determined that five (5) of eight (8) trust accounts contained at
20 least twenty three (23) Arizona outstanding checks with funds totaling twenty
21 two thousand, six hundred fifty one dollars and fifty two cents (\$22,651.52),
22 some dating back to 2005; and
- 23 iii. No documentation was provided to show follow-up or research on these items
24 at either branch or corporate level;
- 25 d. Failed to adequately follow-up on outstanding escrow balances aged greater than six
26 (6) months, specifically:

- i. A total of seven hundred five (705) outstanding California escrow balances totaling one million, two hundred forty eight thousand, seven hundred seventy eight dollars and forty four cents (\$1,248,778.44) dating back to 2002 were found in the eight (8) bank accounts reviewed by Examiners;
 - ii. At least nine (9) outstanding Arizona escrow items totaling three thousand, three hundred twenty eight dollars and twenty three cents (\$3,328.23) found on the trial balance were aged in excess of six (6) months; and
 - iii. One (1) three hundred fifty dollar (\$350.00) item could not be located on the trial balance;
- c. Failed to create and maintain an escrow trial balance report to identify each Arizona escrow transaction where funds were received and held in the escrow trust deposit account;
- f. Failed to properly account for escrow property, specifically:
- i. Funds from separate banks are contained in two (2) company prepared reconciliations;
 - ii. Petitioners' Comerica Bank account number xxxxxx8465 reconciliation includes two million dollars (\$2,000,000.00) held in Mellon 1st Business Bank account number xxxxxx1344;
 - iii. Petitioners' Comerica Bank account number xxxxxx0550 reconciliation includes five hundred thousand dollars (\$500,000.00) held in Petitioners' Citizens Business Bank account number xxxx1551; and
 - iv. Petitioners did not provide a trial balance report for these accounts;
- g. Failed to properly label an escrow trust account, specifically:
- i. Petitioners failed to label Mellon 1st Business Bank account number xxxxxx1344, which contained two million dollars (\$2,000,000.00) used in the reconciliation of the Comerica Bank account number xxxxx8465 as escrow

- 1 trust, fiduciary or other designation indicating that the funds are not the funds
2 of the escrow agent; and
- 3 ii. Petitioners' Mellon 1st Business Bank account number xxxxx1344 is labeled
4 "Sub Account, c/o Mercury Companies, Recon. Dept. Business Checking
5 Account";
- 6 h. Failed to certify or authenticate original escrow trust bank account statements;
- 7 i. Failed to replenish escrow shortages within three (3) business days, specifically:
- 8 i. Petitioners failed to appropriately account for overages and shortages of small
9 amounts in a timely manner;
- 10 j. Failed to research and return escrow overages in a timely manner, specifically:
- 11 i. Petitioners failed to adequately research and return funds remaining in escrow
12 accounts after close in a timely manner;
- 13 k. Failed to post deposits in a timely manner, specifically:
- 14 i. Petitioners failed to post Arizona deposited in a timely manner as evidenced
15 by seven (7) untimely deposits;
- 16 l. Failed to deposit and maintain monies in Arizona banks, specifically:
- 17 i. Petitioners failed to deposit and maintain all monies deposited in escrow in a
18 bank doing business in Arizona or notify all parties to the escrow otherwise in
19 writing; and
- 20 ii. Reconciliations containing Arizona escrow funds include funds in Mellon 1st
21 Business Bank and Citizens Bank that do not conduct business in Arizona;
- 22 m. Failed to authorize banks which hold Respondents' escrow funds to notify the
23 Superintendent of any overdraft or check returned for insufficient funds on any trust
24 or fiduciary account of the escrow agent;
- 25 n. Failed to submit, and the Superintendent did not receive, a schedule of FTC's escrow
26 activity with the fiscal year-end financial statement audit, specifically:

- i. Petitioners' certified public accountant issued a separate report that indicated significant deficiencies in the design or operation of the internal control structure which constitute material reportable conditions;
 - ii. Petitioners did not submit the Report of Reportable Conditions to the Superintendent; and
 - iii. Petitioners did not provide a letter, report, or documentation showing that management has addressed the reportable conditions;
- o. Failed to file a schedule of Respondents' escrow rates they charge to Arizona parties, specifically:
- i. Petitioners utilized the same rates and fees for the Arizona escrow transactions as Petitioners charged for California properties;
- p. Failed to file a schedule of escrow rates and charges, thereby knowingly charging inconsistent fees and charges for escrow services on Arizona escrows;
- q. Failed to provide each depositing buyer or seller, within three (3) business days after receipt of deposited monies, adequate notice of their right to earn interest on all monies deposited into the escrow;
- r. Failed to disclose to the buyers and sellers of a residential dwelling that the title insurance underwriter may offer a closing protection letter that provides protection for loss of escrow monies due to fraud or dishonesty of the escrow agent;
- s. Failed to disclose to the buyer and seller of a residential dwelling, not later than three (3) business days after receipt of any funds, that monies deposited into an escrow account are not insured against loss from fraud or theft, by this State or the United States Government;
- t. Failed to obtain adequate escrow instructions for the allocation of escrow fees charged to escrow parties, specifically:
- i. Petitioners failed to provide specific escrow instructions detailing the

- 1 allocation of escrow costs to be charged the buyer and seller; and
- 2 ii. Petitioners failed to provide a calculation worksheet detailing the escrow fees
- 3 charged to the escrow parties;
- 4 u. Failed to maintain reliability of recording of escrow transactions, specifically:
- 5 i. Petitioners' escrow files failed to contain documentation indicating the
- 6 recording date for the deed of trust in the escrow files; and
- 7 v. Failed to disclose, in writing, to all non-affiliated participants the affiliation it has
- 8 with any participants involved in the escrow transaction, specifically:
- 9 i. Petitioners use the services of and are affiliated by ownership with Lender's
- 10 First Choice.

11 CONCLUSIONS OF LAW

12 1. Pursuant to A.R.S. §§ 6-801, *et seq.*, the Superintendent has the authority and duty to

13 regulate all persons engaged in the escrow agent business and with the enforcement of statutes, rules,

14 and regulations relating to escrow agents.

15 2. By the conduct set forth in the Findings of Fact, FTC and Ms. Anderson have violated

16 the following:

- 17 a. A.R.S. §§ 6-834(A), (B) and (D), 6-841(A) and (B), A.A.C. R20-4-702 and A.A.C.
- 18 R20-4-704, by failing to adopt and implement adequate procedures to ensure accurate
- 19 and timely reconciliation of the escrow trust bank account statements with the escrow
- 20 trial balance report and general ledger exclusively for Arizona escrows;
- 21 b. A.R.S. §§ 6-834(A), (B) and (D), 6-841(A) and (B), A.A.C. R20-4-702 and A.A.C.
- 22 R20-4-704, by failing to provide adequate follow-up on trust account reconciliation
- 23 adjusting items in a timely manner;
- 24 c. A.R.S. §§ 6-834(A), (B) and (D), 6-841(A) and (B), A.A.C. R20-4-702 and A.A.C.
- 25 R20-4-704, by failing to adequately follow-up on stale-dated outstanding checks;
- 26 d. A.R.S. §§ 6-834(A), (B) and (D), 6-841(A) and (B), A.A.C. R20-4-702 and A.A.C.

- 1 R20-4-704, by failing to adequately follow up on outstanding escrow balances aged
2 greater than six (6) months;
- 3 e. A.R.S. §§ 6-834(A), (B) and (D), 6-841(A) and (B), A.A.C. R20-4-702 and A.A.C.
4 R20-4-704, by failing to create and maintain an escrow trial balance report to identify
5 each Arizona escrow transaction where funds were received and held in the escrow
6 trust deposit account;
- 7 f. A.R.S. §§ 6-834(A), (B) and (D), 6-841(A) and (B), A.A.C. R20-4-702 and A.A.C.
8 R20-4-704, by failing to properly account for escrow property;
- 9 g. A.R.S. §§ 6-834(A), (B) and (D), 6-841(A) and (B), A.A.C. R20-4-702 and A.A.C.
10 R20-4-704, by failing to properly label an escrow trust account;
- 11 h. A.R.S. §§ 6-834(A), (B) and (D), 6-841(A) and (B), A.A.C. R20-4-702 and A.A.C.
12 R20-4-704, by failing to certify or authenticate original escrow trust bank account
13 statements;
- 14 i. A.R.S. §§ 6-834(A), (B) and (D), 6-841(A) and (B), A.A.C. R20-4-702 and A.A.C.
15 R20-4-704, by failing to replenish escrow shortages within three (3) business days;
- 16 j. A.R.S. §§ 6-834(A), (B) and (D), 6-841(A) and (B), A.A.C. R20-4-702 and A.A.C.
17 R20-4-704, by failing to research and return escrow overages in a timely manner;
- 18 k. A.R.S. §§ 6-834(A), (B) and (D), 6-841(A) and (B), A.A.C. R20-4-702 and A.A.C.
19 R20-4-704, by failing to post deposits in a timely manner;
- 20 l. A.R.S. §§ 6-834(A), (B) and (D), 6-841(A) and (B), A.A.C. R20-4-702 and A.A.C.
21 R20-4-704, by failing to deposit and maintain monies in Arizona Banks;
- 22 m. A.R.S. § 6-841.01(B), by failing to authorize banks which hold Petitioners' escrow
23 funds to notify the Superintendent of any overdraft or check returned for insufficient
24 funds on any trust or fiduciary account of the escrow agent;
- 25 n. A.R.S. §§ 6-832(A) and 6-832(C), by failing to submit a schedule of FTC's escrow
26 activity with the fiscal year-end financial statement audit;

- 1 o. A.R.S. §§ 6-841(A), 6-846(A) and (B), 6-846.02(A) and A.A.C. R20-4-702, by
2 failing to file a schedule of Petitioners' escrow rates they charge to Arizona parties;
- 3 p. A.R.S. § 6-846.04(D), by failing to file a schedule of escrow rates and charges,
4 thereby knowingly charging inconsistent fees and charges for escrow services on
5 Arizona escrows;
- 6 q. A.R.S. §§ 6-834(D) and (F), by failing to provide each depositing buyer or seller,
7 within three (3) business days after receipt of deposited monies, adequate notice of
8 their right to earn interest on all monies deposited into the escrow;
- 9 r. A.R.S. § 6-841.02(A), by failing to disclose to the buyers and sellers of a residential
10 dwelling that the title insurance underwriter may offer a closing protection letter that
11 provides protection for loss of escrow monies due to fraud or dishonesty of the
12 escrow agent;
- 13 s. A.R.S. § 6-841.03(A), by failing to disclose to the buyer and seller of a residential
14 dwelling, not later than three (3) business days after receipt of any funds, that monies
15 deposited into an escrow account are not insured against loss from fraud or theft, by
16 this State or the United States Government;
- 17 t. A.R.S. § 6-841(B) and A.A.C. R20-4-702, by failing to obtain adequate escrow
18 instructions for the allocation of escrow fees charged to escrow parties;
- 19 u. A.R.S. § 6-841(B)(3) and A.A.C. R20-4-702, by failing to maintain reliability of
20 recording of escrow transactions; and
- 21 v. A.R.S. § 6-840, by failing to disclose, in writing, to all non-affiliated participants the
22 affiliation it has with any participants involved in the escrow transaction.

23 3. The violations of applicable laws, set forth above, constitute grounds for: (1) the
24 issuance of an order pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the
25 violative conduct and to take the appropriate affirmative actions, within a reasonable period of time
26 prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts,

1 practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-
2 132; (3) the suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-817; and (4) an
3 order or any other remedy necessary or proper for the enforcement of statutes and rules regulating
4 escrow agents pursuant to A.R.S. §§ 6-123 and 6-131.

5 4. Pursuant to A.R.S. § 6-132, Petitioners' violations of the aforementioned statutes are
6 grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for
7 each day.

8 ORDER

9 1. Petitioners shall immediately stop the violations set forth in the Findings of Fact and
10 Conclusions of Law.

11 2. Petitioners shall pay to the Department a civil money penalty in the amount of **seventeen**
12 **thousand, five hundred dollars (\$17,500.00), due and payable upon execution of this Consent**
13 **Order.** FTC and Ms. Anderson are jointly and severally liable for payment of the civil money
14 penalty.

15 3. The provisions of the Order shall be binding upon Petitioners, and resolves the Notice of
16 Hearing, subject to Petitioners' payment of the civil money penalty and subject to compliance with
17 the requirements of this Order. Should Petitioners fail to comply with this Order, the Superintendent
18 shall initiate further disciplinary proceedings against Petitioners' license.

19 4. The provisions of this Order shall be binding upon FTC and Ms. Anderson, their
20 employees, agents, and other persons participating in the conduct of the affairs of FTC.

21 5. This Order shall become effective upon service, and shall remain effective and
22 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated

23 ...

24 ...

25 ...

26 ...

1 or set aside.

2 SO ORDERED this 13th day of November, 2007.

3 Felecia A. Rotellini
4 Felecia A. Rotellini
5 Superintendent of Financial Institutions

6 **CONSENT TO ENTRY OF ORDER**

7 1. Petitioners acknowledge that they have been served with a copy of the foregoing
8 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the
9 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

10 2. Petitioners admit the jurisdiction of the Superintendent and consent to the entry of the
11 foregoing Findings of Fact, Conclusions of Law, and Order.

12 3. Respondents state that no promise of any kind or nature has been made to induce
13 them to consent to the entry of this Order, and that they have done so voluntarily.

14 4. Petitioners acknowledge that the acceptance of this Agreement by the Superintendent
15 is solely to settle this matter and does not preclude this Department, any other agency or officer of
16 this state or subdivision thereof from instituting other proceedings as may be appropriate now or in
17 the future.

18 5. Ivy Anderson, on behalf of Financial Title Company and herself, represents that she
19 is the President, and that, as such, has been authorized by Financial Title Company to consent to the
20 entry of this Order on its behalf.

21 6. Petitioners waive all rights to seek judicial review or otherwise to challenge or contest
22 the validity of this Cease and Desist Order.

23 DATED this 30 day of OCTOBER, 2007.

24 By Ivy Anderson
25 Ivy Anderson, President
26 Financial Title Company

1 ORIGINAL of the foregoing filed this 13
2 day of November, 2007, in the office of:

3 Felecia A. Rotellini
4 Superintendent of Financial Institutions
5 Arizona Department of Financial Institutions
6 ATTN: Susan Ross
7 2910 N. 44th Street, Suite 310
8 Phoenix, AZ 85018

9 COPY mailed/delivered same date to:

10 Hon. Lewis D. Kowal
11 Administrative Law Judge
12 Office of the Administrative Hearings
13 1400 West Washington, Suite 101
14 Phoenix, AZ 85007

15 Erin O. Gallagher
16 Assistant Attorney General
17 Office of the Attorney General
18 1275 West Washington
19 Phoenix, AZ 85007

20 Robert D. Charlton, Assistant Superintendent
21 Mack Wynegar, Senior Examiner
22 Peggy Prill, Senior Examiner
23 Arizona Department of Financial Institutions
24 2910 N. 44th Street, Suite 310
25 Phoenix, AZ 85018

26 AND COPY MAILED SAME DATE by
Certified Mail, Return Receipt Requested, to:

Ivy Anderson, President
Financial Title Company
705 Gold Lake Drive, Suite 210
Folsom, CA 95630
Petitioners

Hon Chan, Esq.
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Attorney for Petitioners


R0406: CPA07-156